



"The City With a Heart"

Larry Franzella, Mayor
Jim Ruane, Vice Mayor
Ken Ibarra, Councilmember
Rico E. Medina, Councilmember
Irene O'Connell, Councilmember

MINUTES CITY COUNCIL MEETING

April 14, 2009

7:00 p.m.

1. **CALL TO ORDER: THIS IS TO CERTIFY THAT** the San Bruno City Council met in regular session on April 14, 2009 at the San Bruno Senior Center, 1555 Crystal Springs Road. The meeting was called to order at 7:00 p.m.

Mayor Franzella thanked the **San Bruno Garden Club** for the beautiful floral arrangement.

2. **ROLL CALL/PLEDGE OF ALLEGIANCE:** Presiding was Mayor Franzella, Councilmembers O'Connell, Ibarra and Medina in attendance, absent Vice Mayor Ruane, with notice. Recording by Clerk Bonner. **Councilmember Ibarra** led the Pledge of Allegiance.

3. ANNOUNCEMENTS:

Mayor Franzella announced Operation Clean Sweep will be held Saturday, May 2nd, 2009 at 9:00 a.m at San Bruno City Park, volunteers are encouraged to register on-line through the City's website. **Councilmember O'Connell** said there would be water bottles, made from recycled aluminum presented to everyone who participates. She asked everyone to come out to help clean up San Bruno and at the end of the work shift there will be a barbeque.

4. PRESENTATIONS:

a. **Mayor Franzella** Presented a Proclamation Declaring April 19-24 as West Niles Virus and Mosquito and Vector Control Awareness Week to **Chindi Peavey, Ph.D., Vector Ecologist**, who thanked the Mayor and City Council as well as Robert Riechel for helping develop their policies and long range plans.

b. **Mayor Franzella** presented a 25-year Service Award to Kevin Mahar, Employee in the Community Services Department Parks Division. **Park and Facilities Manager Freitas** introduced Kevin and gave some background on his twenty-five years of service with the City. **Kevin Mahar** thanked everyone.

Councilmember Ibarra thanked Kevin and his crew for all they do, especially the Posy Parade.

Councilmember Medina acknowledged the length of time he has known Kevin and his commitment, his care and dedication to the community have been top-notch and he thanked him.

5. **REVIEW OF AGENDA:** **Mayor Franzella** moved Item 11. to follow Item 8.

6. **APPROVAL OF MINUTES:** Regular Council Meeting of March 24, 2009. **Councilmember O'Connell** said on Page 4 of the minutes the Hetch-Hetchy seismic retrofit is 2.4 billion dollars (not million). The balance of the minutes approved as submitted.

7. CONSENT CALENDAR:

a. **Approve:** Payroll of March 29, 2009.

b. **Approve:** Accounts Payable of March 16, 23, and 31, 2009.

M/S Medina/Ibarra to approve the Consent Calendar and passed with all ayes. Vice Mayor Ruane was absent.

8. PUBLIC HEARINGS (Notices have been published, posted and mailed):

a. Hold Public Hearing, Waive First Reading and Introduce Ordinance, Repealing Section 12.100.055 and Adding New Section 12.100.055 of the San Bruno Municipal Code Related to Vehicle and Equipment Repair at Residences.

Associate Planner Russell gave an overview of the staff report and asked for questions.

Councilmember Ibarra said there was a good list of activities for vehicle repair not allowed on the driveway, only in the garage. He asked if it matters if the garage door is open? **Russell** said, as written it does not specify. **Councilmember Ibarra** said a resident who has an ongoing problem with a neighbor, with an auto repair business in their residence, would it be clear for them to understand this section that it would be a clear violation? **Russell** concurred.

Mayor Franzella opened the public hearing.

John Barrelier, San Anselmo, started to speak, but it was not related to this public hearing.

Dan O’Kane, Cedar Dr. asked if what would happen if someone did not have a garage?

Mayor Franzella said they would not be able to work on a vehicle.

City Manager Jackson said minor repairs could be done in the driveway, only the limited number of defined items. **Mayor Franzella** said he talked too soon. Minor repairs could be done, not major repairs.

O’Kane asked what if a part is not available for a week? **Russell** said if the vehicle were inoperable, it would need to be parked in a garage under our existing code. The change today would be the entire site needs to be cleaned of all debris and parts.

M/S Ibarra/Medina to close the public hearing and passed with all ayes. Vice Mayor Ruane absent.

Councilmember Ibarra said minor repairs are not allowed in the driveway, they must be in the garage. Routine repairs are allowed in the driveway.

Mayor Franzella asked staff for clarification of minor repairs and routine repairs. **Russell** said routine repairs would be allowed outside in the driveway or in a garage. Routine repairs mean preventive maintenance work, including repair or replacement of the battery, change of oil or filter, fan or other motor driven belts, hoses, lamps, wiper blades, repair of flat tires, alternator, and generator, and also lubrication. Minor Repairs are repairs that can only be conducted in the garage and that means repair or replacement of brake parts, starters, water pumps, engines, transmissions, power trains, suspension, and electrical equipment, auto body repair, and spot spraying but specifically excludes any use of a torch or welding with an open flame and full body paint spraying.

Councilmember O’Connell clarified the ordinances are available through our web site, so when it is in force, people can look it up and doublecheck if they have questions.

M/S O’Connell/Medina to waive the first reading and passed with all ayes. Vice Mayor Ruane was absent.

Councilmember O’Connell introduced the ordinance for adoption and passed with a unanimous vote. Vice Mayor Ruane was absent.

b. Hold Public Hearing, Waive First Reading, and Introduce an Ordinance Amending Chapter 12.96.150, Regulating Auto-Related uses in the M-1 Industrial District of the San Bruno Municipal Code.

Community Development Director Akin gave an overview of the staff report and asked for questions.

Councilmember Ibarra said there was an example given of an oil change business, is the same true with an auto repair business? **Akin** said there is a definition within the City's code related to commercial uses, minor repair and major repair and it basically defines minor as auto repair, brake changes, transmission repair, major is auto body repair uses so if you went from a transmission shop to an auto body shop, that would require the use permit process.

Councilmember Ibarra said a major auto repair where engines are fixed goes out of business and sells or their lease is up and they move, is the owner of the building able to lease it to another auto repair of the same type? **Akin** said there is no planning commission process because they are grandfathered in; however, there would still be a follow-up of industrial performance standards making the business owner aware of the issues. He said they estimate three to five businesses a year would have to go through the use permit process. **Councilmember Ibarra** asked if there is any way that condition can be put on any change in business? **City Attorney Thompson** said it is set by state law and our own code specifies with a type of usage becomes not allowed after a period of time. The way it occurs to come under the new rules depends on whether there has been a break in time, possibly six months or a substantial change in use.

Councilmember Ibarra said the City has cracked down on the uses of auto repair business. He said 10% of the violators are businesses that have no parking and they are grandfathered. Maybe in time, parking will alleviate this problem. Is there a way six months can be reduced to three months? **City Attorney Thompson** said she would be glad to research it.

Councilmember Medina asked how those already permitted by the City know the rules have changed? Some of the businesses do not have adequate parking but they were allowed to gain their permit by the process in place. It should not have been what it was, but it is what it is.

Councilmember Ibarra said he was involved working with an auto repair business and they purchased a building which could not be grandfathered because it was a change in use. He said this business was in full compliance while there were a number of other businesses on the street, which were non-compliant. He went on to say as long as they continue to turn over, they will never be reviewed. **City Attorney Thompson** said it is a slow process, permits run with the land.

Mayor Franzella said it does afford the business some protection. For instance, an individual has run a business for twenty years and wants their son to step in, there is some assurance the business can continue to operate as long as the codes and laws under which the business was open.

Councilmember Medina said staff might look at time limitations because of parking difficulties.

Councilmember O'Connell applauded efforts made by staff.

Mayor Franzella opened the Public Hearing. No one wished to speak.

M/S Medina/Ibarra to close the Public Hearing and passed with all ayes. Vice Mayor Ruane was absent.

M/S O'Connell/Medina to waive the first reading and passed with all ayes. Vice Mayor Ruane was absent.

Councilmember O'Connell introduced the ordinance for adoption and passed with all ayes. Vice Mayor Ruane was absent.

Councilmember Ibarra asked if staff could go to the Traffic Safety & Parking Committee to look at time limits, or at least a study.

11. Receive Annual Report from the Redevelopment Advisory Committee (moved to follow 8.)

Joan Skinner, Redevelopment Advisory Committee gave a power point presentation. She listed the members of the Committee and gave an overview of what the committee has done and plans to do in the future.

9. PUBLIC COMMENT ON ITEMS NOT ON AGENDA:

Dan O’Kane, Cedar Ave. gave statistics on the water rates as well as the number of children attending the various public schools in San Bruno. He asked if he gets eighteen units of water and he uses ten to drink and eight goes on the lawn, how could it be said it is going into the sewer?

Mayor Franzella said there is a season when they measure, staff could explain exactly how it is measured.

John Barrelier, N San Anselmo read the salaries and overtime of some of the firefighters and police. He asked about compensation received at retirement.

City Manager Jackson said overtime is not included in retirement base salary. **Mayor Franzella** pointed out overtime is strictly monitored and the differential in public safety pay for overtime is not much different than regular time. Overtime does not receive a PERS contribution.

10. CONDUCT OF BUSINESS:

a. Adopt Resolution Adopting the Peninsula Partnership Leadership Council’s Bill of Rights for Children and Youth of San Mateo County.

City Manager Jackson said the Peninsula Partnership Leadership Council is a joint effort of the County of San Mateo, County San Mateo Schools and a number of other organizations interested in developing policy to support the healthy development of children and families in San Mateo County. A Bill of Rights has been developed and she asked Council to adopt the resolution.

Councilmember Ibarra introduced the resolution for adoption and passed with a unanimous vote. Vice Mayor Ruane was absent.

c. Receive Quarterly Investment Report from City Treasurer.

City Treasurer Marty gave an update on the City’s Investment report. **Mayor Franzella** thanked him for the information.

c. Adopt Resolution Authorizing the City Manager to Execute a Rehabilitation Contract with Layne Christensen, Inc. for the Well #17 Rehabilitation Project in the Amount of \$35,796 and Approving Construction Budget in the Amount of \$41,500.

Deputy Director Howard gave a power point presentation on Well #17 with a visual model of a well-casing and asked for Council adoption.

Councilmember Medina said he went to the well, watched the video and saw the sample and it was pretty bad. We are now missing the opportunity to have the use of Well #17. In various levels of the professional services there are dollar amounts before formal bids can be done. He said anything over \$5,000 has to have a formal bid and asked if the bid process could be streamlined? This sometimes makes it hard to bring these projects forward. Staff might revisit to bring up current dollar amounts.

Councilmember Ibarra such is life with water wells. There are maintenance issues and the key is to having the ability to know what the problem is without guessing.

Councilmember Medina introduced the resolution for adoption and passed with a unanimous vote. **Vice Mayor Ruane** was absent.

d. Receive Report on Education and Enforcement Activities for the 2009 Fireworks Season.

Police Chief Telford gave the background on the previous fireworks season and an overview of the forthcoming fireworks season and asked for questions. **Division Chief George Devendorf** was available for questions also.

City Manager Jackson said the report of 2007 shows cost incurred of \$48,000. The number for 2008 is \$58,576, which is the actual cost incurred, very close to the number projected for 2009.

Mayor Franzella thanked them for the report and said it was a relatively quiet fireworks season last year and hopefully it will be the same this year.

Councilmember Ibarra asked about Public Works' staff being hired to watch over certain areas? **Telford** said with high fire danger, those personnel were used. **Councilmember Ibarra** asked if there was an extra cost. **Telford** said it was recovered and it is a possibility again this year.

Councilmember Medina asked if public service announcements would be done again? **Telford** said yes.

e. Receive Report and Provide Direction Related to Proposed Ordinance Regarding Dangerous Fireworks.

City Attorney Thompson gave an overview of the staff report, which deals with dangerous fireworks, which relates to three different things. The first deals with dangerous fireworks under 25 lbs. of less; second, making the sales use or discharge of dangerous fireworks illegal and the third is consideration whether to ban or allow the public display of fireworks.

Councilmember Ibarra said have all the arrests, which have been made for using dangerous fireworks? **City Attorney Thompson** said possessing. **Telford** said possession and the penalty was set by the San Mateo County courts ranging from \$115 to \$240. **Councilmember Ibarra** said with this ordinance, would we recover? **City Attorney Thompson** said they would have the option.

Councilmember Ibarra asked if this was less work for the police officer to issue? **Telford** said it is being explored. The primary objective is to deter illegal fireworks. **City Attorney Thompson** said she has been asked to follow-up on this.

Mayor Franzella said illegal fireworks should be deterred and a \$1000. fine was good. He said he would hate to have an ordinance, which completely precludes public display.

Councilmember Medina said \$1000 fine for the first time offense. He said on the public display it needs to be tightened up for public entity only. Not a private, out-of-the-way that is not controlled. **Mayor Franzella** and **Councilmember O'Connell** agreed.

Mayor Franzella said the comment from three of the members was a straight \$1000 for first time offense to clarify Councilmember Ibarra's understanding.

Dennis Rival, Rival Communications supported the enforcement.

e. Adopt Resolution Approving Artichoke Joe's Casino Request for Continuing City Authorization for 38 Tables Subject to City Tax and Voluntary Agreement for Tax Amount of \$1,452,267 for 2009-10.

Mayor Franzella said this is a three-year agreement and an increase of about \$50,000 more than was paid last year and the agreement provides for an increase each year.

Councilmember Ibarra introduced the resolution for adoption and passed with a unanimous vote. Vice Mayor Ruane was absent.

g. Receive Report and Provide Direction to Staff Regarding Amendments to Massage Establishment Ordinance to Conform to New State Law.

City Attorney Thompson gave an overview of changes to massage establishments, which will go into effect September 2009 by a new state law and asked for Council's direction.

Councilmember Ibarra asked how many massage therapists are in San Bruno and do they have business licenses? **Thompson** said yes they do need a business license. **Councilmember Ibarra** asked if the massage therapists are aware of this new law? **Thompson** said not yet, but she felt legitimate therapists would be aware. **Councilmember Ibarra** asked if the legitimate therapists would have to go through hurdles because of this process? **Thompson** said there are hours they have to acquire from legitimate massage schools recognized by the organization, fingerprinting and a background check. **Mayor Franzella** said they only have to do that if they want the State certification, if they do not want certification, they can remain under the laws the City currently has. **Thompson** concurred.

Mayor Franzella said the new ordinance should require posting of the certifications for the police in a visible lobby.

Police Chief Telford, in answer to Councilmember Ibarra's question on how many massage therapists in San Bruno, said four establishments in town.

Councilmember Ibarra said he knows there are massage therapists who are sole proprietors and work by appointment and they go directly to a residence? **Thompson** said the rule you can't treat them differently than other professionals or providers of professional services such as medical, dental offices and accountants. She said she would look into it.

Councilmember Medina said what the State has done if they want to open up a facility anywhere dentistry, eye care, they have that right to open up an establishment as well. **Thompson** said she wanted to be clear that under the code those types of services mentioned are not allowed in residential districts but it would eliminate the distance requirement of the 500 feet to residential. **Mayor Franzella** said only if they comply with the State requirement.

h. Receive Report, Review Proposed Ballot Question, and Draft Ordinance Increasing Transient Occupancy Tax from 10% to 12%; and Provide Direction on Whether to Proceed with Preparations to Submit Measure on the November 2009 Ballot.

City Manager Jackson gave an overview of the staff report on the Transient Occupancy Tax and asked for Council's direction.

Mayor Franzella said we currently entered into a lawsuit regarding on-line reservations and as part of the agreement of us entering, we not change our existing ordinance. If we were to move forward and change it would require us to back out. The loss of revenue to San Bruno is relatively small, so if we don't touch that issue, we move forward. If the lawsuit is won, it automatically provides that to the City. If the lawsuit is lost, we would be unable to enforce it. He suggested we stay where we are as far as that issue. He proposed the tax be increased from 10% to 12%.

City Manager Jackson said the amount of transient occupancy tax revenue the City collects and the amount we might expect from on-line reservations is relatively smaller than some of the other jurisdictions in our area.

M/S Ibarra/O'Connell to draft an ordinance to increase the Transient Occupancy Tax from 10% to 12% and passed with all ayes. Vice Mayor Ruane was absent.

11. REPORT OF COMMISSIONS, BOARDS, & COMMITTEES:

Receive Annual Report from the Redevelopment Advisory Committee (moved to follow 8.)

12. COMMENTS FROM COUNCIL MEMBERS: None.

13. CLOSED SESSION:

Mayor Franzella said they would go into closed session with no reportable items from the session.

a. Closed Session to Provide Direction to Legal Counsel Regarding Pending Litigation in Lind v. City of San Bruno, et al., San Mateo Superior Court Case Civ. No. 478318. (Cal. Gov't Code 54956.9(a).)

b. The City Manager and Human Resources Director Request a Closed Session Pursuant to Cal. Gov't Code Section 4957.6 Regarding Direction for Labor Negotiations with the Mid Management Bargaining Unit.

14. ADJOURNMENT:

Mayor Franzella closed the meeting at 9:07 p.m. The next regular City Council Meeting will be held on April 28, 2009 at 7:00 pm, at the Senior Center, 1555 Crystal Springs Road, San Bruno.

Respectfully submitted for approval
at the regular City Council Meeting of
April 28, 2009

Carol Bonner, City Clerk

Larry Franzella, Mayor